*THE HON'BLE SRI JUSTICE P.S.NARAYANA

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THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

+W.P.No.8980 of 2007

% 16-5-2007

Smt.Lalitha .. Petitioner

Vs.

$ The State of A.P.
Rep. by Chief Secretary to Government
Secretariat,
Hyderabad
and another ..
Respondents

<HEAD NOTE:

<GIST:

! Counsel for petitioner : Sri T.V. Ramana Rao

^ Counsel for respondents : Advocate General

? CASES REFERRED :

1. 2005(2) ALT 244 (FB)
2. 2006(3) SCC 321
3. 2003(1) ALT (Crl) 181 (D.B.)
4. 1998(1) ALT (Crl) 190 (D.B.)
5. 1997(2) ALT (Crl) 130 (D.B.)

6.1995(1) An.W.R. 345 (D.B.)

7. AIR 1989 S.C. 1703
8. 1997(1) ALT (Crl) 184(D.B.)
9. 1998(2) ALT 660(D.B.)
10. 1994(4) ALT 743 (D.B.)
11. 2000(4) ALT 540(D.B.)
12. 2004(5) ALT 250(D.B.)
13. 2005(3) ALT 487 (D.B.)
14. AIR 1989 S.C. 364
15. AIR 1981 S.C. 431
16. (2002) 3 SCC 754
17. AIR 1975 S.C. 609
18. AIR 1975 S.C. 808
19. AIR 1975 S.C. 1165
20. AIR 1974 S.C. 1214
21. AIR 1972 S.C. 1669
22. AIR 1975 S.C. 473
23. AIR 1975 S.C. 522
24. AIR 1975 S.C. 1093
25. AIR 1974 S.C. 1336
26. 2006(3) SCC 321

THE HON'BLE SRI JUSTICE P.S.NARAYANA

&

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.8980 of 2007

Date : -5-2007

Between:

Smt.Lalitha w/o.Banoth Sammaiah .. Petitioner

And

The State of A.P.
Rep. by Chief Secretary to Government,
Secretariat, Hyderabad
and another .. Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

&

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.8980 of 2007

ORDER: (per P.S. Narayana.,J)

1. Smt.Lalitha, w/o.Banoth Sammaiah, filed the present Writ Petition praying for a writ of Habeas Corpus directing the respondents to produce the detenu by name Banoth Sammaiah s/o.Balu Naik, aged 28 years, R/o. K.K. Nagar Mandal, Kamanpur of Karimnagar District and set him at liberty by declaring the detention order dated 7-4-2007 in Rc.No.306/2007/P&Ex/A3 passed by the 2nd respondent and the order in G.O.Rt.No.1942, General Administration (Law and Order.II) Department dated 12-4-2007 passed by the 1st respondent approving the detention order as illegal, arbitrary and contrary to the provisions of Act No.1 of 1986 and Article 21 of the Constitution of India and to pass such other suitable

orders.

2. It is stated that the petitioner is a resident of K.K. Nagar, Godavarikhani of Kamanpur Mandal of Karimnagar District and eking out livelihood by working as a daily agricultural labour and she is the wife of the detenu by name Banoth Sammaiah and her husband also is working as agricultural labour and they are poor and belong to socially and economically backward class community. It is stated that the 2nd respondent herein passed the order dated 7-4-2007 in Rc.No.306/2007/P&Ex/A3 exercising the powers under Section 3(1) and 3(2) of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter in short referred to as "Act" for the purpose of convenience) on the ground that the detenu was involved in three criminal cases i.e., (i) C.O.R.No.19/2006-07 dated 20-4-2006, (ii) C.O.R.No.470/2006-07 dated 29-12-2006 and (iii) C.O.R.No.635/2006-07 dated 12-3-2007 under Section 7-A r/w. Section 8(e) of A.P. Prohibition & Excise Act 1995 on the file of Prohibition & Excise Station, Godavarikhani-II of Karimnagar District. It is further stated that charge sheet was filed in all the above said cases on 28-3-2007 and they are pending for trial. The detenu was taken into

custody on 7-4-2007 and is detained in Central Prison, Warangal. The detenu was served with the detention order dated 7-4-2007 and the grounds of detention and in the grounds of detention only three cases as aforesaid were referred to for initiation of the proceedings under Section 3 of the Act. It is also stated that the involvement of the detenu in the above referred cases is yet to be established by the competent court in which the charge sheet was filed. Except the above said three cases, the detenu was not involved in any other case nor he was convicted for any other offence. The passing of the impugned order referring to the above three criminal cases is irrelevant and does not constitute a ground for initiating proceedings under Section 3 of the Act. The acts of the detenu alleged in the above criminal cases does not constitute any offence or acting in any manner prejudicial to the maintenance of public order even if they were taken on their face value and as such the detention order is liable to be set aside. The detention order passed by the 2nd respondent did not appreciate the material placed before it and had passed the order mechanically and the material placed before the 2nd respondent does not warrant passing of the detention order dated 7-4-2007. It is also stated that the 1st respondent-detaining authority relied on three crimes referred above in which

the detenu was stated to have involved in possession of 5 litres of I.D. Liquor, 20 litres of I.D. liquor and 5 litres of I.D. liquor respectively. The possession of small quantity of liquor does not cause any prejudice to the maintenance of public order. Further, the grounds shown in the detention order are stale, irrelevant and hence the detention order is liable to be set aside and it is not known which ground influenced the detention authority in passing the impugned order. Further, the detenu was arrested in all the three cases and was released on bail and charge sheet was also filed. The detaining authority did not place orders granting bail to the detenu and copies of charge sheet filed in the above cases along with the grounds of detention order so as to enable the detenu to make effective representation to the detaining authority and to the Government and on this ground alone the impugned order is liable to be set aside. It is further stated that the Hon'ble Supreme Court in a number of cases was pleased to hold that the documents which were referred to and relied on by the detaining authority must form part of the detention order and failure to serve documents i.e., bail order and charge sheet, vitiates the detention order. In such circumstances, the petitioner filed the present Writ Petition under Article 226 of the Constitution of India.

3. A counter affidavit is filed on behalf of the 2nd

respondent wherein it was stated that the order of detention against the detenu Banoth Sammaiah was passed by exercising the powers under Section 3(1) and (2) r/w. Section 2(a) and (b) of the Act as he had been indulging in the offences of possession, transportation and sale of I.D. liquor in and around K.K. Nagar, Godavarikhani of Karimnagar District in the manner prejudicial to the maintenance of public order and tranquility thereby causing danger to the public health. The illicitly distilled liquor sold by the detenu was prepared in crude methods and it was causing wide spread danger to the public health. Upon perusing the record placed by the Sponsoring Authority i.e., Prohibition & Excise superintendent, Peddapalle, Karimnagar District, it is clear that the activities of the detenu fall within the definition of Bootlegger as defined under Section 2(b) of the Act and accordingly the impugned order was passed on satisfying that the circumstances exist for passing the order of detention. It is also further stated that while passing the impugned order, in order to determine the conduct of the detenu, the 2nd respondent had gone through various cases registered against him. On 20-4-2006 at about 6.50 P.M. the Excise officials proceeded to the house of the detenu on reliable information that he was in possession of I.D. liquor and found him in possession of a

can with 5 litres of I.D. liquor. The said contraband was seized from his possession and the sample drawn was sent for chemical analysis and C.O.R.No.19-2006 was registered under Section 7(A) r/w. Section 8(3) of A.P. Prohibition & Excise Act 1995 of Prohibition and Excise Station, Godavarikhani.II and that the detenu was arrested and sent to judicial custody. The Chemical Examiner, Warangal, analysed the sample and in his report in C.E.No.647/2006 Sl.No.11823 dated 22-8-2006 opined that the sample is illicitly distilled liquor containing sediment. It was also opined that the same is injurious to the health and unfit for human consumption. After completing the investigation charge sheet was filed before the Judicial First Class Magistrate, Manthani and it is yet to be numbered. Further, on 29-12-2006 at about 12.30 P.M. when the Excise Officials proceeded to the house of the detenu on reliable information of sale of I.D. liquor and proceeded to Railway Track 7B, Vittalnagar, Godavarikhani, they found the detenu in possession of 20 litres of I.D. liquor. The said contraband was seized from his possession and the sample drawn was sent for chemical analysis and C.O.R.No.470/2006-07 was registered under Section 7(A) r/w. Section 8(e) of A.P. Prohibition and Excise Act 1995 of Prohibition and Excise Station, Godavarikhani.II and the detenu was arrested and sent to judicial custody. The Chemical Examiner,

Warangal, analysed the sample and in his report in C.E.No.119/2007 Sl.No.3068, dated 29-1-2007, it was opined that the sample written statement illicitly distilled liquor containing sediment and the same is injurious to health and unfit for human consumption. After completing the investigation, charge sheet was filed before the Judicial First Class Magistrate, Godavarikhani and it is yet to be numbered. It is further stated that on 12-3-2007 at about 8 A.M. the Excise officials proceeded to the house of the detenu on reliable information of sale of I.D. liquor, proceeded to 5 Incline Chowrastha, Godavarikhani and found the detenu in possession of 5 litres of I.D. liquor. The said contraband was seized from the possession of the detenu and the sample drawn was sent for chemical analysis. On that the detenu was arrested and sent to judicial custody and C.O.R.No.635/2006-07 was registered. The Chemical Examiner, Warangal, analysed the sample and in his report in C.E.No.402/2007, Sl.No.6868, dated 23-3-2007 opined that the sample is illicitly distilled liquor containing sediment and the same is injurious to health and unfit for human consumption. After completing the investigation, charge sheet was filed before the Judicial First Class Magistrate, Godavarikhani and it is yet to be numbered. Thus the activities of the detenu clearly fall within the definition of “Bootlegger” as

defined under Section 2(b) of the Act requiring passing of the order of detention. Upon perusing of the material papers, the 2nd respondent is satisfied that the detenu shall be prevented from further indulging himself in similar offences in future and thereby the order of detention was passed on justified grounds on 7-4-2007. It is further stated that the detenu was taken into custody on 7-4-2007 and lodged at Central Prison, Warangal and at the time of taking him into custody the order of detention, the grounds of detention and the material relied upon were served on the detenu and the same was acknowledged by him. The detenu was duly informed that he has a right to make representation to the Detaining Authority, Chief Secretary to Government and Advisory Board and thus the Constitutional and statutory mandate had been complied with. It is further stated that the Government issued G.O.Rt.No.1942, General Administration (Law & Order.II) Department, dated 12-4-2007 approving the order of detention and the order of detention passed against the detenu will be placed before the Advisory Board in its meeting to be held on 30-4-2007 and after the Advisory Board rendering its opinion the Government would pass appropriate orders. Further it is stated that the detention order under the Act was passed only to prevent the detenu from further indulging in such bootlegging

activities. It is further stated that the competent Court would try the cases and pass appropriate orders, but that does not bar the detaining authority from passing the order of detention against the detenu with a view to prevent him from further indulging in such illegal activities on perusing the material placed before it on justified grounds. It cannot be said that the detention order is liable to be set aside on the ground that he was not convicted or the truth or otherwise of the above cases is not yet established by the competent Court. It is also further stated that the crimes referred to in the order of detention are of the same Excise Year 2006-07 and in all the crimes the detenu was caught red-handedly while he was in possession of I.D. liquor and hence it cannot be said that the crimes are irrelevant for arriving at the subjective satisfaction. Further it is stated that it is not correct to state that the crimes mentioned in the detention order are stale. The first crime was registered in April 2006, the second was registered in the month of December 2006 and the third was registered in the month of March 2007 and the order of detention was passed against the detenu on 7-4-2007 and as such it cannot be said that the crimes registered are stale, irrelevant and the order of detention is liable to be set aside on the said grounds. It is further stated that the ordinary Excise Laws failed to curb the illegal activities of the detenu and hence

he was continuously indulging in bootlegging activities despite registration of crimes against him and hence the order of detention against the detenu to prevent him further indulging in such activities was passed. It is further stated that in COR.No.19/2006-07 the detenu was found in possession of 5 litres of I.D. liquor, in C.O.R.No.470/2006-07 the detenu was found in possession of 20 litres of I.D. liquor and in C.O.R.No.635/2006-07 the detenu was found in possession of 5 litres of I.D. liquor. Further it is stated that by consuming the said I.D. liquor, there would be wide spread danger to the public health and it would cause prejudice to the maintenance of public order and therefore it is not the quantity of the liquor but quality of the liquor is the criterion under the provisions of the Act. The detenu was in possession of I.D. liquor and after analysis of the sample, the Chemical Examiner opined that it is illicitly distilled liquor and injurious to health and unfit for human consumption. It is further stated that the order of detention was made basing on the decision of this Court in **Doddi Sharada Vs. Collector and District Magistrate**[1] wherein it was held that the opinion of the Analyst is paramount to determine whether the liquor seized would cause danger to the public health. The opinion of the Analyst that the liquor is not potable and unfit for human

consumption is the relevant material to detain a person. Hence it cannot be said that the order of detention is liable to be set aside on this ground. It is also further stated that in C.O.R.No.19/2006-07 registered on 20-4-2006, the detenu was enlarged on bail on 21-4-2006; in C.O.R.No.470/2006-07 the detenu was arrested on 29-12-2006 and was released on bail on 2-1-2007 and in C.O.R.No.635/2006-07 the detenu was arrested on 12-3-2007 and was released on bail on 13-3-2007. As the said offences are bailable in nature, the detenu was enlarged on bail within one or two days of his arrest. It is further stated that the detention order was passed placing reliance on **Sunila Jain Vs. Union of India** [2] wherein it was held that if a person had been released on bail on the ground that the offence is bailable it would not be necessary to bring the said fact before the detaining authority. The detaining authority will have to satisfy himself on the basis of the material placed on record as to whether the order of preventive detention should be passed against the detenu or not. The 2nd respondent had arrived at the subjective satisfaction on the basis of the Chemical Examiner's Report and the same were served on the detenu and it cannot be said that the order of detention is vitiated on the ground that the bail application and bail orders were not served on the detenu

and it would affect the right to make an effective representation to the detaining authority and the Government. This is the stand taken by the 2nd respondent in the counter affidavit.

4. Heard Sri T.V. Ramana Rao, the Counsel representing the writ petitioner and also the learned Adovcate General.

5. The Counsel on record addressed elaborate submissions and also placed reliance on certain decisions to substantiate their respective contentions. The grounds specified being self-explanatory which already had been referred to supra, the same need not be repeated again. Section 2(b) of the Act defines 'boot-legger' as hereunder :

> "boot-legger means a person, who distils manufacturers, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968 and the rules, notifications and orders made thereunder, or in contravention of any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by himself or through any other person, or who abets in any other manner the doing of any such thing".

Section 3 of the Act dealing with **Power to make orders detaining certain persons** reads as hereunder :

(1) The Government may, if satisfied with respect to any bootlegger, dacoit, drug offender, goonda, immoral traffic offender or land-grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate of a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1) exercise the powers conferred by the said sub-section.

Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period, from time to time by, any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after

the making thereof, unless, in the meantime, it has been approved by the Government."

In Section 3(1), the words "*... from acting in any manner prejudicial to the maintenance of public order*..." would assume some importance. In sub-section (2) proviso, the words "…. shall not in the first instance exceed three months" also may be relevant in this context. In **M.Laxmi Bai Vs. Commissioner of Police** [3] it was observed at paras 8, 9, 15 to 18 as hereunder :

> "If a bootlegger sells ID arrack, which contains harmful substances, certainly he can be detained on the ground that his activities constitute grave danger to life or public health. A person cannot be detained under Section 3(1) unless the acts in which he is indulging affect or likely to affect adversely to the maintenance of public order. If the Chemical Examiner's report does not disclose as to what is the permissible level of the fusil oil and impermissible limits so as to cause grave or widespread danger to life or public health, the detaining authority is not justified in ordering detention. *Boya Chinna Subbarayudu V. The Collector and District Magistrate, Kurnool and others (*1994(3) ALT 467 (D.B.)
>
> If the order of detention is not in accordance with law, it cannot be sustained and the same is liable to be quashed on the ground that there was no material to show that the contraband, if consumed, will result in grave or widespread danger to life or public health. *Smt.Konala Syama,a v. The Collector & District Magistrate, East Godavari*

District.(1996(4) ALT 205(D.B.).

In *K.Aruna Kumari v. Govt. of A.P.* (1988) 1 SCC 296) the Supreme Court held that if material and vital facts which would influence the mind of the detaining authority one way or the other on the question whether or not to make the detention order, are not placed, it would vitiate the subjective satisfaction rendering the detention order illegal.

In *Shivprasad Bhatnagar v. State of Madhya Pradesh* (AIR 1981 S.C. 870) the Supreme Court held as follows:

> "It is now well settled that grounds of detention must be pertinent and not irrelevant, proximate and not stale, precise and not vague. Irrelevance, staleness and vagueness are vices, any single one of which is sufficient to vitiate the ground of detention. And, a single vicious ground is sufficient to vitiate an order of detention."

The Supreme Court further held that :

> "The second ground of detention suffers from both the vice of staleness because of the passage of time since the happening of some of the incidents, and the vice of irrelevance because they relate to 'law and order' and not to 'the maintenance of public order'. The detenu is therefore entitled to be released."

In *Raji Reddi V. The Collector & District Magistrate, Adilabad* (1996(4) ALT 305(D.B.) a Division Bench of this Court held that the detaining authority has to prove that the detenu is continuously engaged in activities in a manner prejudicial to the maintenance of public order before ordering detention and an isolated incident cannot be made a basis to show

the detenu as habitual offender and the order of detention passed by the authority in a mechanical manner without applying its mind to the facts of the case is unsustainable."

In **K.Ramamohan Reddy Vs. Chief Secretary to Government** [4] it was held at paras 5, 6, 7, 8, 9 and 10 as hereunder :

"The law is well settled that all the relevant material containing in the grounds, form the basis of order of detention and therefore the said material should have been considered by 2nd respondent, the detaining authority, and the detenu should be supplied with the same, failure forms vice of non-application of mind by the detaining authority. Undoubtedly, the bail application, the order granting the bail and also orders issuing NBW should be taken into consideration by the detaining authority. It is important to notice that order granting bail to the detenu might indicate that there was, *prima facie,* no case against the detenu, in which he was involved. Hence it is a favourable material to the detenu, which has to be considered by the detaining authority before he comes to the subjective satisfaction. Admittedly the detaining authority has not considered the order granting bail to the detenu. It is only stated that he was aware of the said fact. Awareness of a fact is totally different from considering the said fact. Only in the process of consideration the application of mind will be involved. Awareness of a fact does not amount to consideration. Awareness is only knowledge of a fact, which is neutral circumstance, whereas the

consideration is an active application of the mind on the known facts. In formation of an opinion whether a person is liable to be placed under preventive detention or not, active application of the mind of the detaining authority is what is needed.

Learned Counsel for the petitioner cited the decision in *Abdul Sathar Ibrahim Manik vs. Union of India* (AIR 1991 S.C. 2261). In this case the Apex Court discussed various cases on several points raised and the conclusions were set down and the relevant principle was considered at conclusions 3 to 6, which are extracted hereunder :

> "(3) If the detenu has moved for bail then the application and the order thereon refusing bail even if not placed before the detaining authority it does not amount to suppression of relevant material. The question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody.
>
> (4) Accordingly the non-supply of the copies of bail application or the order refusing bail to the detenu cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under Art. 22(5) when it is clear that the authority has not relied or referred to the same.
>
> (5) When the detaining authority has merely referred to them in the narration of events and has not relied upon them, failure to supply bail application and order refusing bail will not cause any prejudice to the detenu in making an effective representation. Only when the detaining authority has not only referred to but

also relied upon them in arriving at the necessary satisfaction then failure to supply these documents, may, in certain cases depending upon the facts and circumstances amount to violation of Art. 22(5) of Constitution of India. Whether in a given case the detaining authority has casually or passingly referred to these documents or also relied upon them depends upon the facts and the grounds, which aspect can be examined by the Court.

(6) In a case where detenu is released on bail and is at liberty at the time of passing the order obtained detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu".

From a reading of the above principles, what emerges is that, it is not necessary, in case where bail was refused, to apply the mind of the detaining authority to the said fact, since the detenu was in actual custody. In such a case, non-supply of the bail application and order refusing bail, could not cause prejudice to the detenu. However, in case where the detenu was released on bail, then the detaining authority has to necessarily apply his mind to such a fact and that would be a vital ground for making an order of detention. Hence bail application and the order granting bail, should be placed before the detaining authority and the copies of the same should also be supplied to the detenu. Bearing the above principles in mind, if we

consider the instant case, it has to be held that the order of detention suffers from the vice of non-application of mind by the detaining authority and also breach of the Constitutional guarantee of supply of the necessary material to the detenu, causing prejudice to him to make proper representation.

The decision in *Ashadevi vs. K.Shivraj* (AIR 1979 S.C. 447), cited by the learned Counsel for the petitioner, is also to the effect that if the facts which would have influenced the mind of the detaining authority in one way or the other, were neither placed before nor considered by the detaining authority, it amounts to non-application of mind, rendering the order of detention invalid.

However, learned Government Pleader submits that the order granting bail is a neutral fact and hence it need not be placed before nor considered by the detaining authority. In support of the said contention he relied upon the decision in *Y.Gowtham Siddartha Vs. The Commissioner of Police & Additional District Magistrate, Vijayawada City* (1995(2) ALT (Crl) 68). In that case the detenu was released on conditional bail and ground No.4 of the detention order has not adverted to this aspect. It only stated that after the commission of offence the detenu has escaped from the city and evaded the police and finally surrendered before the Court and the case was under investigation. A Bench, comprising one of us, held that the detenu being on bail was a neutral circumstance, which would not affect the validity of the order of detention and that on the other hand had the detenu not been released on bail and remanded as under-trial

prisoner, that might be a vital circumstance to be borne in mind. The decision in *ASI Manik's case (1 supra)* has not been noticed by the learned Judges in the above case. In the case (1 supra) the Apex Court has clearly held that in case where the detenu was released on bail and was at liberty at the time of passing the order of detention, then it would be a vital ground for the order of detention. In such a case the bail application and the order of granting bail should necessarily be placed before the authority and copies also be supplied to the detenu. In view of this decision of the Apex Court, the view of the Bench of this Court cannot be accepted.

In the next case cited by the learned Government Pleader, *Wasi Uddin Ahmed vs. The District Magistrate, Aligarh, U.P.*, no doubt the detenu was not furnished with the copies of FIRs in the criminal cases in which he was convicted and in the three other criminal cases pending against him. But the contention based on non-supply of relevant documents, was negatived by the Apex Court on the ground that the said document was already furnished to the detenu. Hence the learned Government Pleader now contends that since the detenu was already aware of the bail application and bail orders, non-supply of documents was not vital to the order of detention. But in the instant case the lacuna being not only the non-supply of documents, but also non-consideration of the same by the detaining authority, which amounted to non-application of mind by the detaining authority. Further the decision in *ASI Manik's case (1 supra)* being directly on the point, we are bound by the

same.

In *Prakash Chandra Mehta vs. Commissioner and Secretary, Government of Kerala* (AIR 1986 S.C. 687), cited by the learned Government Pleader, an order of detention was passed taking into consideration the confessional statement made by the detenu. The said confession was subsequently detracted. The fact of detracted confession was not taken into consideration in passing the detention order. It was therefore contended that the detention was illegal. But the said contention was negatived. No doubt this is a decision of a Bench of Apex Court comprising of 3 Judges, whereas the decision in *ASI Manik's case (1 supra)* is only of 2 Judges and hence the earlier decision would prevail. But a consideration of facts would reveal that the only question that was canvassed in the said case was whether there was any other material placed before the detaining authority to ascertain whether 60 gold biscuits of foreign origin was imported and was in possession of the detenu. There was sufficient other material in proof of the said allegation. In this view the Court held that even if the detracted confession was not taken into consideration, the order would not be vitiated. The facts in the instant case are entirely different. The law declared by the Apex Court in *ASI Manik's case (1 supra)* squarely covered the point raised in the instant case."

In **Dhanraj Singh Vs. Govt. of A.P. rep. by its Chief Secretary and others** [5] it was held at paras 5 to 9 as hereunder :

“A perusal of the grounds of detention discloses that the order of detention was passed on 7 instances quoted in the grounds of detention. They relate to seizure of various quantities of I.D. liquor sachets, two electrical sacheting machines and one alcoholometre. The first instance is dated 20-5-1995 wherein a raid was conducted on a house in Jungur Basthi, Lower Dhoolpet and the detenu was arrested and Crime No.340/94-95 was registered by the Station House Officer (Prohibition & Excise), Narayanaguda under Section 34(a) of the A.P. Excise Act, 1968 read with Section 8(b) of Prohibition Act, 1995 and that the detenu was released on bail. The second instance is dated 21-8-1995 wherein a surprise raid was conducted on H.No.14-10-885, Jungur Basthi, Lower Dhoolpet and polythene bags containing 150 I.D. Liquor sachets were seized and the detenu was arrested and Crime No.577/94-95 was registered by the Station House Officer (Prohibition & Excise), Narayanaguda under Section 34(a) of the A.P. Excise Act, 1968 and in that crime also the detenu was released on bail. The third instance is that on 31-8-1995 a surprise raid was organized on House No.14-10-885, Jungur Basthi, Lower Dhoolpet and one gunny bag containing 380 sachets of I.D. Liquor was seized and the detenu was arrested and Crime No.595/94-95 was registered by the Station House Officer (Prohibition & Excise) Narayanaguda under Section 34(a) of the A.P. Excise Act, 1968 and in that crime also the detenu was released on bail.

The above three instances are relevant for the first submission made by the learned Counsel for

the petitioner. It is stated in the impugned order that the Government Chemical Examiner, Regional Excise Laboratory, Hyderabad analysed the samples of I.D. Liquor in the above three cases and opined that "the sample is illicitly distilled liquor, unfit for potable purpose". The learned Counsel for the petitioner relied on an observation in the Judgment of a Division Bench of this Court in *B.C.Subbarayudu vs. District Collector* (1994(3) alt 467), which is as follows:

> "Unless it is stated in the report of the Chemical Examiner that the seized liquor from the premises of the petitioner contained fusel oil in impermissible limits so as to cause grave or widespread danger to life or public health the detaining authority will not be justified in ordering the detention on the ground that the detenu is acting in a manner prejudicial to the maintenance of public order."

Here, it is relevant to read Section 3(1) of the Act, which is as follows :- **Power to make orders detaining certain persons** reads as hereunder :

> (1) The Government may, if satisfied with respect to any bootlegger, dacoit, drug offender, goonda, immoral traffic offender or land-grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

From a perusal of the said provision, it is clear that the power to order preventive detention can be exercised upon the satisfaction of the detaining authority, (i) that the person sought to be detained

is a bootlegger, dacoit, drug offender, goonda, immoral traffic offender or landgrabber; and (ii) that the order of detention must be made with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

The detenu is described as a boot-legger in the order of detention. The expression "bootlegger" is defined in Section 2(b) of the Act, which is as follows:-

> "boot-legger means a person, who distils manufacturers, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968 and the rules, notifications and orders made thereunder, or in contravention of any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by himself or through any other person, or who abets in any other manner the doing of any such thing".

Inasmuch as it is not disputed before us that the detenu falls within the meaning of bootlegger, therefore, we proceed on the assumption that the detenu is a bootlegger within the meaning of the Act and the first condition, noted above, is satisfied.

The controversy however, is whether by selling illicit distilled liquor, the detenu was acting in a manner prejudicial to the maintenance of public

order, the second condition noted above. The expression “acting in any manner prejudicial to the maintenance of public order” is defined in Section 2(a) of the Act in the following terms:-

> “acting in any manner prejudicial to the maintenance of public order” means when a bootlegger, a dacoit, a drug-offender, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order:
>
> Explanation : For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely *inter alia*, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health.”

A plain reading of the definition and the explanation, makes it clear that when a bootlegger, a dacoit, a drug-offender, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging in any of the activities which effect adversely or likely to affect adversely the maintenance of public order, then such an action is termed as acting in any manner prejudicial to the maintenance of ‘public order’. The explanation says that for the purpose of Section 2(a) ‘public order’ shall be deemed to have been affected adversely or shall be deemed likely to be

affected adversely, inter alia, if any of the activities of any person referred to in the said clause, directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health. The above clause will be attracted to the facts of the present case, if it is shown that the detaining authority was satisfied that the activities of possession, transporting and sale of liquor, directly or indirectly, are causing or calculated to cause a grave or widespread danger to the life of public health.

It is now well settled that mere sale of illicit liquor, *per se*, does not satisfy the above requirements (See *Muktakmiya Jabbarmiya Shaikh Vs. M.M. Mehta*(1995(2) ALT Crl. 3 (D.N.)=1995(3) SCC 237). Therefore, unless the alleged activities result in grave or wide-spread danger to life or public health, the order of detention cannot be sustained. It is in this context that the observations of the Division Bench in *Subbarayudu's case* (1994(3) ALT 467) that is relied upon. It would be apt to refer to the facts in *Subbarayudu's case* (1994(3) ALT 467). There the order of detention was passed on two grounds viz., (1) relating to possession in transporting of 'Fermented wash' and (2) relating to transporting of 'illicitly distilled liquor'. The report of the Chemical Examiner in that case indicated presence of 'fusel oil'. The Division Bench pointed out that the report of the Chemical Examiner did not indicate that 'fusel oil' was present in impermissible limits so as to cause grave or widespread danger to life or public health in the 'fermented wash' and

'illicitly distilled liquor'. That case is clearly distinguishable from the facts of the present case. In this case, the report of the Government Chemical Examiner of Prohibition & Excise, Regional Prohibition & Excise Laboratory, Hyderabad contains the following remarks:-

> "The sample is illicitly distilled liquor unfit for potable purpose'.

The same remarks are noted in all the three cases (instances) referred to above. It is true that the report does not contain the words 'fusel oil' is in impermissible limits so as to cause grave or widespread danger to life or public health' as pointed out by the Division Bench. The observations of the Division Bench have to be understood in the light of the circumstances of that case. In our view, where the report of the Chemical Examiner states that the illicitly distilled liquor is unfit for potable purpose, it has to be implied that if such an illicitly distilled liquor is consumed, it causes grave or widespread danger to life or public health. It cannot be emphasized that if such illicitly distilled liquor is sold in any part of the State, the danger is widespread and grave as it is not fit for potable purpose. Therefore, in our view, merely because the report does not contain the words that 'the illicitly distilled liquor would cause grave and widespread danger to life and public health', it cannot be held that such a liquor would not result in widespread danger to life and public health. The said expression is not a formula which should be found in every report. If the report is indicative of the fact that the illicitly distilled liquor is unfit for potable purpose, it impliedly means that

consumption of such a liquor would cause danger to life and public health. For the above reasons, we are unable to accept the first contention of the learned Counsel for the petitioner."

The distinction between 'public order' and 'law' had been dealt with in **Y.Gowtham Siddartha Vs. The Commissioner of Police & Additional District Magistrate, Vijayawada City and others** [6]. In **Rashidmiya Vs. Police Commissioner, Ahmedabad** [7] the Apex Court while dealing with boot-legging activities and detention in the context of affecting maintenance of public order under Gujarat Prevention of Anti-Social Activities Act 1985 observed :

"No doubt as per Section 6 of the Act, grounds of detention are severable and as such the order of detention should not be deemed to be invalid or inoperative if one or some of the grounds are invalid. In the present case, the question for consideration is that even if the impugned order cannot be sustained on the ground that the detenu is a 'dangerous person', can it be sustained on the other ground that the detenu is a 'bootlegger'. The answer is that the order could be sustained, provided there are materials to show that the bootlegging activities of the detenu affected adversely or were likely to affect the maintenance of public order. A conjoint reading of Section 2(b) and Section 3(4) with the explanation annexed thereto clearly spells out that in order to clamp an

order of detention upon a 'bootlegger' under Section 3 of the Act, the detaining authority must not only be satisfied that the person is a bootlegger within the meaning of Section 2(b) but also that the activities of the said bootlegger affect adversely or likely to affect adversely the maintenance of public order. Reverting to the facts of this case, the vague allegations in the grounds of detention that the detenu is the main member of the gang of Abdul Latif Abdul Wahab Shaikh indulging in bootlegging activities and that the detenu is taking active part in such dangerous activities are not sufficient for holding that his activities affected adversely or were likely to affect adversely the maintenance of public order in compliance with sub-section (4) of Section 3 of the Act that the activities of the detenu have caused harm, danger or alarm or a feeling of insecurity among the general public or any Section thereof or a grave or widespread danger to life, property or public health as per the explanation to Section 3(4).

The allegations registered in the abovementioned four cases against the detenu on the ground that he was dealing in liquor have no bearing on the question of maintenance of public order in the absence of any other material that those activities of the detenu have adversely affected the maintenance of public order.

....

This Court in Ashok Kumar v. Delhi Administration (1982) 2 SCC 403 : (AIR 1982 S.C. 1143) at p.1147, para 13) has observed :

"It is the potentiality of the act to disturb the even tempo of the life of the community

which makes it prejudicial to the maintenance of public order."

In the recent decision of this Court in Piyush Kantilal Mehta v. The Commissioner of Police, Ahmedabad City (1988) 4 J.T. 703 : (AIR 1989 S.C. 491) a question similar to one before us arose for consideration. In that case, the allegations in the grounds of detention were that the detenu was a prohibition bootlegger, that he has indulged into the sale of foreign liquor and that he and his associates indulged in use of force and violence and also beating innocent citizens by which an atmosphere of fear was created. In that case the detenu was alleged to have been caught red-handed possessing English wines with foreign marks and in the second occasion he was caught while shifting 296 bottles of foreign liquor in an Ambassador car. While dealing with that case, this Court observed as follows (at p.497 of AIR):

> "It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him, but surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of Section 2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of Section 3 of the Act, his activities as a

bootlegger affect adversely or are likely to affect adversely the maintenance of public order."

The decisions in **Pilli Yeteswari Vs. Govt. of A.P.** [8], **A.Rukmini Vs. Collector & District Magistrate, Kurnool** [9], **Anakala Maddileti and others Vs. Govt. of A.P.** [10], **Mir Mohammed Ali Vs. Govt. of A.P.** [11], **Thallapuneni Venkateswarlu Vs. Collector and District Magistrate, Cuddapah** [12], **S.Prasad Reddy Vs. Collector and District Magistrate, Anantapur** [13], **Ayya @ Ayub Vs. State of U.P. and another** [14], **Shalini Soni Vs. Union of India and others** [15] and **Chowdarapu Raghunandan Vs. State of Tamil Nadu and others** [16] also may be referred to in this context.

6. In the light of the facts and circumstances, now the question to be decided is whether the order of detention impugned in the present Writ Petition to be quashed in the facts and circumstances of the case.

7. Detention Legislations being concerned with liberty of citizens/detenus, the provisions of such Legislations may have to be carefully scrutinized and unless the ingredients of the specific provision under

which the detention was made by the concerned authority are satisfied, it is needless to say that the order devoid of satisfaction of such ingredients may have to be inevitably held as invalid. Hence, the validity of an order of detention may have to be judged in the light of this background.

8. The detention order, in this case, is being questioned on the ground that the same is contrary to the provisions of the Act aforesaid and also violative of Article 21 of the Constitution of India. Incidentally, Article 22 of the Constitution of India also may be referred to in this context. In the decisions referred to supra, the learned Division Benches which had dealt with similar matters had followed the prior decisions of the Apex Court and came to the conclusion that unless the provisions of a particular statute under which detention order is made are satisfied the order of detention cannot be sustained. The same view was expressed by the Apex Court in the decision referred (7) supra. The mere fact that three crimes had been registered by itself may not be sufficient but further satisfaction or further material to satisfy the condition "… *from acting in any manner prejudicial to the maintenance of public order"* to be satisfied. The term or expression 'public order' may also be understood in the backdrop of the Detention Legislations and further the nature and the gravity of the offences which may have a close nexus to

this concept also may have to be weighed by the detaining authority while making an order of detention. The relevancy of ground of maintenance of public order while making an order of detention had been dealt with by the Apex Court in the undernoted decisions :

Ram Ranjan Vs. State of West Bengal [17], Teka Vs. State of West Bengal [18], Samir Vs. State of West Bengal [19], Milon Vs. State of West Bengal [20], State of West Bengal Vs. Ashok [21], Gora Vs. Government of West Bengal [22], Bankatlal Vs. State of Rajasthan [23], Dunnth Vs. Collector [24] and **Golam Vs. Police Commissioner [25].**

9. It is also pertinent to note that specific stand had been taken that the husband of the petitioner was arrested in the cases referred to supra and had been released on bail also and the charge sheets also had been filed. It is also further stated that the husband of the petitioner having been released on bail and charge sheets having been filed, these crucial aspects were not considered and the Sponsoring Authority had not placed the copies of the same along with the grounds of detention by virtue of which prejudice had been caused to the detenu in relation to making effective representation.

It is true that the Full Bench in the decision referred (1) supra referred the decision of the Division Bench referred (3) supra and held that under Section 3(1) it is necessary to prevent a person from acting in any manner prejudicial to the maintenance of public order and public order in terms of explanation to Section 2(a) of the Act would also include persons who cause harm and danger to public health and therefore if the Magistrate is satisfied that the activities of the person are dangerous to the public health, he is authorized to order detention of such person. The Full Bench also further observed at para-8 as hereunder :

> "The question would be in order to come to a subjective satisfaction as to whether an activity of a person would cause danger to public health, it would be necessary for that authority to know what was being sold or distributed by a person was fit for human consumption or should he also know what percentage of the ingredients which it contained were harmful to the human beings in consumption. In our view, the mere production of illicit liquor is danger to public health. But because of the definitions in Section 2 of the Act and then the power under Section 3 of the Act, it would be difficult for a detaining authority to detain a person merely on the ground that such person was dealing with illicit liquor, because he has to satisfy himself that the illicit liquor would cause danger to public health. So mere production, distribution or sale of illicit liquor may not be a relevant ground for a detaining authority to detain a person, but if he is

satisfied on the basis of material before him that such illicit liquor would cause danger to public health, then, in our view, the ground would be relevant."

Evidently, the decision of the Apex Court referred (7) supra had not been cited before the Full Bench. Further, there cannot be any quarrel relating to the proposition which had been laid down by the Apex Court in **Sunila Jain Vs. Union of India** [26] wherein it was held that if a person had been released on bail if the offence is bailable, it is not necessary to bring the said fact before the detaining authority. The ground raised by the detenu is something different and hence this decision also may not be applicable to the facts of the case.

10. While referring to the three cases registered against the detenu it was mentioned that the Chemical Examiner analysed the samples and opined that the samples were illicitly distilled liquor containing sediment. On the strength of this report, certain submissions were made that in the light of the view expressed by the Full Bench referred (1) supra, the impugned order is legal and valid. However, the decision of the Full Bench referred (1) supra is distinguishable and at any rate the same is not applicable to the facts of the present case.

11. Be that as it may, on a careful consideration of

the respective stands taken by the parties, the averments made by the writ petitioner in the affidavit filed in support of the Writ Petition and also the averments made by the 2nd respondent in the counter affidavit and in the light of the language of Section 2(b) of the Act and the specific conditions specified in Section 3(1) of the Act already referred to supra and also in the light of the views expressed by the Apex Court in a catena of decisions referred to supra while dealing with the Detention Legislations in the context of Articles 21 and 22 of the Constitution of India, this Court is satisfied that the grounds which had been specified are definitely insufficient to sustain the order of this nature under the provisions of the Act. The justification advanced and the close proximity of the offences also cannot be a ground to be considered in favour of sustaining the impugned order. Viewed from any angle, the impugned order cannot be sustained and accordingly the order of detention which is impugned is hereby quashed. It is needless to say that in the light of the same the husband of the writ petitioner, the detenu, be set at liberty forthwith.

12. The Writ Petition is accordingly allowed. No order as to costs.

Justice P.S. Narayana

Justice Nooty Rama Mohan Rao

Date : -5-2007

L.R. copy to be marked : YES / NO

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[1] **2005(2) ALT 244 (FB)**
[2] **2006(3) SCC 321**
[3] **2003(1) ALT (Crl) 181 (D.B.)**
[4] **1998(1) ALT (Crl) 190 (D.B.)**
[5] **1997(2) ALT (Crl) 130 (D.B.)**
[6] **1995(1) An.W.R. 345 (D.B.)**

[7] **AIR 1989 S.C. 1703**
[8] **1997(1) ALT (Crl) 184(D.B.)**
[9] **1998(2) ALT 660(D.B.)**
[10] **1994(4) ALT 743 (D.B.)**
[11] **2000(4) ALT 540(D.B.)**
[12] **2004(5) ALT 250(D.B.)**
[13] **2005(3) ALT 487 (D.B.)**
[14] **AIR 1989 S.C. 364**
[15] **AIR 1981 S.C. 431**
[16] **(2002) 3 SCC 754**
[17] AIR 1975 S.C. 609
[18] AIR 1975 S.C. 808

[19] AIR 1975 S.C. 1165

[20] AIR 1974 S.C. 1214

[21] AIR 1972 S.C. 1669

[22] AIR 1975 S.C. 473

[23] AIR 1975 S.C. 522

[24] AIR 1975 S.C. 1093

[25] AIR 1974 S.C. 1336

[26] **2006(3) SCC 321**